

FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D.C. 20426

OFFICE OF ENERGY MARKET REGULATION

Atlantic Energy LLC  
Atlantic Energy MA LLC  
Atlantic Energy MD, LLC  
(collectively, the Atlantic Energy Companies)

In Reply Refer To:  
Docket No. ER16-1946-000  
ER16-1948-000  
ER16-1947-000

July 29, 2016

Ms. Natara G. Feller, Esq.  
Attorney for the Atlantic Energy Companies  
Feller Energy Law Group, PLLC  
159 20<sup>th</sup> Street  
Suite 1B  
Brooklyn, New York 11232

Reference: Market-Based Rate Authorization

Dear Ms. Feller:

On June 16, 2016, you filed on behalf of each of the Atlantic Energy Companies applications for market-based rate authority with accompanying tariffs. The proposed market-based rate tariffs provide for the sale of energy, capacity, and ancillary services at market-based rates.<sup>1</sup> The Atlantic Energy Companies requests waivers commonly granted to similar market-based rate applicants.

Your filings were noticed on June 17, 2016, with comments, protests or interventions due on or before July 7, 2016. None was filed.

Pursuant to the authority delegated to the Director, Division of Electric Power Regulation - West, under 18 C.F.R. § 375.307, your submittals filed in the referenced dockets are accepted for filing, effective August 16, 2016.<sup>2</sup> Based on your

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<sup>1</sup> The Atlantic Energy Companies requests authorization to sell ancillary services in the markets administered by PJM Interconnection, L.L.C., New York Independent System Operator, Inc., ISO New England Inc., California Independent System Operator Corp., Midcontinent Independent System Operator, Inc., and Southwest Power Pool, Inc. The Atlantic Energy Companies also requests authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

<sup>2</sup> We note that the Atlantic Energy Companies are not being granted authority to

representations, the Atlantic Energy Companies meet the criteria for a Category 1 seller in all regions and are so designated.<sup>3</sup>

You state that the Atlantic Energy Companies intend to act as power marketers. You further represent that Atlantic Energy MD, LLC and Atlantic Energy MA LLC are wholly owned by Atlantic Ventures NA, LLC. You state that Atlantic Energy LLC is owned by an individual. You further state that the Atlantic Energy Companies are not affiliated with any entity that owns or controls generation or transmission facilities. You affirmatively state that the Atlantic Energy Companies and their affiliates have not erected barriers to entry and will not erect barriers to entry into the relevant market.

You state that the Atlantic Energy Companies meet the criteria for a Category 1 seller in all regions because the Atlantic Energy Companies and their affiliates own or control less than 500 megawatts of generation in all regions; the Atlantic Energy Companies and their affiliates do not own, operate, or control transmission facilities in any region; the Atlantic Energy Companies are not affiliated with a franchised public utility in any region; and the Atlantic Energy Companies do not raise any other vertical market power issues.

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make third-party sales of operating reserves to a public utility that is purchasing ancillary services to satisfy its own open access transmission tariff requirements to offer ancillary services to its own customers. If the Atlantic Energy Companies seek such authority, they must make the required showing and receive Commission authorization prior to making such sales. *See Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies*, Order No. 784, FERC Stats. & Regs. ¶ 31,349, at PP 200-202 (2013), *order on clarification*, Order No. 784-A, 146 FERC ¶ 61,114 (2014). *See also Third-Party Provision of Primary Frequency Response Service*, Order No. 819, FERC Stats. & Regs. ¶ 31,375 at P 70 (2015).

<sup>3</sup> *See Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 816, FERC Stats. & Regs. ¶ 31,374, at P 320 (2015), *order on reh'g*, Order No. 816-A, 155 FERC ¶ 61,188 (2016); *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at PP 848-850, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012).

### Market-Based Rate Authorization

The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power.<sup>4</sup>

Based on your representations, the Atlantic Energy Companies' submittals<sup>5</sup> satisfy the Commission's requirements for market-based rate authority regarding horizontal and vertical market power.

The Atlantic Energy Companies requests for waiver of Subparts B and C of Part 35 of the Commission's regulations requiring the filing of cost-of-service information, except for sections 35.12(a), 35.13(b), 35.15 and 35.16 are granted. The Atlantic Energy Companies requests for waiver of Part 41 and Part 141 of the Commission's regulations concerning accounting and reporting requirements are granted with the exception of 18 C.F.R. §§ 141.14 and 141.15.<sup>6</sup> The Atlantic Energy Companies requests for waiver of Part 101 of the Commission's regulations are hereby granted, with the exception that waiver of the provisions of Part 101 that apply to hydropower licensees is not granted with respect to licensed hydropower projects.<sup>7</sup> Notwithstanding the waiver of the accounting and reporting requirements here, The Atlantic Energy Companies are expected to keep their accounting records in accordance with generally accepted accounting principles.

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<sup>4</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

<sup>5</sup> The next time the Atlantic Energy Companies makes a market-based rate filing with the Commission, they must include revised tariffs in compliance with Appendix C – Limitations and Exemptions Regarding Market-Based Rate Authority to include appropriate citations. *Niagara Mohawk Power Corporation*, 121 FERC ¶ 61,275 (2007) at P 8. *See also*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 384.

<sup>6</sup> *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 984-985.

<sup>7</sup> Hydropower licensees are required to comply with the requirements of the Uniform System of Accounts pursuant to 18 CFR Part 101 to the extent necessary to carry out their responsibilities under Part I of the Federal Power Act (FPA). We further note that a licensee's status as a market-based rate seller under Part II of the FPA does not exempt it from its accounting responsibilities as a licensee under Part I of the FPA. *See* Order No. 816, FERC Stats. & Regs. ¶ 31,374 at PP 345-350; *Seneca Gen., LLC*, 145 FERC ¶ 61,096, at P 23, n.20 (2013) (citing *Trafalgar Power, Inc.*, 87 FERC ¶ 61,207, at 61,798 (1999) (noting that "all licensees are required to comply with the requirements of the Uniform System of Accounts to the extent necessary to carry out their responsibilities under [s]ections 4(b), 10(d) and 14 of the FPA"))).

The Atlantic Energy Companies requests blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability. Separate notices were published in the Federal Register establishing a period during which protests could be filed. None was filed. The Atlantic Energy Companies are authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of The Atlantic Energy Companies, compatible with the public interest, and reasonably necessary or appropriate for such purposes.<sup>8</sup>

The Atlantic Energy Companies must file Electric Quarterly Reports (EQR) with the Commission, consistent with Order Nos. 2001<sup>9</sup> and 768.<sup>10</sup> The Atlantic Energy Companies must file EQRs electronically with the Commission consistent with the procedures set forth in Order No. 770.<sup>11</sup> The Atlantic Energy Companies must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting their market-based rate authority.<sup>12</sup>

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<sup>8</sup> See Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 999-1000.

<sup>9</sup> *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334, *order refining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *order on clarification*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements*, Order No. 2001-G, 120 FERC ¶ 61,270, *order on reh'g and clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, FERC Stats. & Regs. ¶ 31,282 (2008).

<sup>10</sup> *Elec. Mkt. Transparency Provisions of Section 220 of the Fed. Power Act*, Order No. 768, FERC Stats. & Regs. ¶ 31,336 (2012), *order on reh'g*, Order No. 768-A, 143 FERC ¶ 61,054 (2013).

<sup>11</sup> See *Revisions to Electric Quarterly Report Filing Process*, Order No. 770, FERC Stats. & Regs. ¶ 31,338, at P 3 (2012) (citing Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at P 31).

<sup>12</sup> 18 C.F.R. § 35.42 (2015); see also *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

This action does not constitute approval of any service, rate, charge, classification, or any rule, regulation, or practice affecting such rate or service provided for in the filed documents; nor shall such action be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against any of the applicant(s).

This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R § 385.713.

Questions regarding the above order should be directed to:

Federal Energy Regulatory Commission  
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Phone: (202) 502-6479  
Office of Energy Market Regulation  
888 First Street, N.E.  
Washington, D.C. 20426

Sincerely,

Steve P. Rodgers, Director  
Division of Electric Power  
Regulation - West

Document Content(s)

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